

Think Ambient Terms and Conditions of Supply

1. DEFINITIONS AND INTERPRETATION

1.1. The definitions and rules of interpretation in this clause apply in these conditions:

"**Business Day**" means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;

"**Contract**" means the contract between the Supplier and THINK AMBIENT consisting of these conditions the Purchase Order and the Specification;

"**Goods**" means the goods as described in the Purchase Order;

"**Purchase Order**" means the purchase orders generated by THINK AMBIENT;

"**Price**" means the fee to be paid under the Contract to the Supplier;

"**Specification**" means the document provided (where applicable) by THINK AMBIENT detailing the required specifications of the Goods;

"**Supplier**" means the person, company, firm or partnership who have accepted THINK AMBIENT's Purchase Order for goods and is identified in the Purchase Order;

"**THINK AMBIENT**" means Think Ambient Ltd.

Construction: In these conditions, the following rules apply:

A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

A reference to a party includes its personal representatives, successors or permitted assigns.

A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

A reference to writing or written includes e-mails.

2. APPLICATION OF TERMS

2.1 These conditions are THINK AMBIENT's standard terms and conditions which will govern the Contract between THINK AMBIENT and the Supplier to the entire exclusion of all other terms and conditions unless any other contract terms have been agreed between the parties in writing. The Contract shall only be deemed to have been accepted when the Purchase Order has been accepted by the Supplier.

a. The Contract constitutes the entire agreement between the parties. The **Supplier** acknowledges that it has not relied on any **statement**; promise, representation, assurance or warranty made or given by or on behalf of the **THINK AMBIENT** is not set out in the Contract.

3. QUALITY AND DEFECTS

3.1. The Goods shall be of the best available design, of the best quality, material and workmanship, be without fault and conform in all respects with the Purchase Order or the Specification supplied by THINK AMBIENT to the Supplier.

3.2. The Supplier shall comply with all applicable laws, regulations or other legal requirements concerning the manufacture, packaging and delivery of the Goods. THINK AMBIENT's rights under

these conditions are in addition and without prejudice to THINK AMBIENT's rights under and any other applicable laws..

3.3. At any time prior to delivery of the Goods, THINK AMBIENT shall have the right to inspect the Goods.

3.4. If as a result of inspection and/or testing of the Goods, THINK AMBIENT are not satisfied that the Goods will comply in all respects with the Purchase Order or the Specification, THINK AMBIENT:

3.4.1. may inform the Supplier of their opinion and the Supplier shall take such steps necessary to ensure compliance, or

3.4.2. may cancel the Purchase Order and terminate the Contract at any time prior to the delivery of the Goods, in each case without penalty or other obligation to compensate the Supplier for losses it has and/or may occur.

3.5. The Goods shall be marked in accordance with THINK AMBIENT's instructions and any applicable regulations or requirements of the carrier and properly packed and secured so as to reach their destination in an undamaged condition.

4. PRICE

4.1. The Price of the Goods shall be as stated in the Purchase Order and unless otherwise so stated, shall be inclusive of all charges, including but not limited to the cost of package, insurance and delivery of the Goods.

4.2. No variation in the Price or extra charges shall be made without THINK AMBIENT's prior written consent.

5. PAYMENT

5.1. The Supplier shall invoice THINK AMBIENT on or at any time after successful delivery of the Goods and each invoice shall include the Purchase Order number.

5.3. THINK AMBIENT shall pay the Invoice within 30 days from the end of month of receipt of a proper invoice following successful delivery of the Goods in accordance with the Purchase Order.

5.4. Without prejudice to any other right or remedy, THINK AMBIENT reserves its right to set-off against its indebtedness to the Supplier any debt owed to it by the Supplier and any liabilities, damages, losses, costs, charges and expenses which it has incurred as a consequence of any breach by the Supplier of this Contract or any other contract with THINK AMBIENT.

6. DELIVERY

6.1. Unless otherwise instructed the Goods shall be delivered, carriage paid, to the delivery address place of business as stated on the Purchase Order, or to such other place of delivery as is agreed between the parties in writing prior to delivery of the Goods.

6.2. The Supplier will deliver the Goods during normal business hours, unless otherwise agreed by both parties in writing, and the Supplier shall off-load the Goods at their own risk.

6.3. Where the date of delivery of the Goods is not specified by THINK AMBIENT, the Supplier shall give THINK AMBIENT reasonable notice of the specified date.

6.4. The time of delivery of the Goods is of the essence of the Contract.

6.5. THINK AMBIENT shall be entitled to reject any Goods delivered which are not strictly in accordance with the Purchase Order or the Specification.

6.6. The Supplier shall, free of charge and within 5 Business Days either repair or replace (as THINK AMBIENT shall elect) such of the Goods as may either be damaged in transit or been placed in transit have failed to be delivered to THINK AMBIENT provided that THINK AMBIENT shall within a

reasonable period of delivery give notice to the Supplier that the Goods have been damaged.

7. RISK AND PROPERTY

7.1. The Goods shall remain at the Supplier's risk until delivery is complete. Ownership and title of the Goods shall pass to THINK AMBIENT when payment has been made.

7.2. THINK AMBIENT, may by written notice to the Supplier reject any of the Goods which fail to meet the requirements specified in the Purchase Order or the Specification or any other written document. Such notice shall be given within a reasonable time after delivery of the Goods. If THINK AMBIENT rejects any of the Goods pursuant to this condition THINK AMBIENT shall be entitled (without prejudice to any other rights and remedies):

7.2.1 to have the Goods either repaired by the Supplier or (if THINK AMBIENT shall elect) replaced by the Supplier with Goods which comply in all respects with the requirements specified; or

7.2.2 to obtain a refund from the Supplier

7.3. Any Goods rejected or returned by THINK AMBIENT shall be returned to the Supplier at the Supplier's own risk and expense.

8. AUDIT

8.1. The Supplier shall keep and maintain all records of the previous 3 years of orders and stock ("**Records**") usage placed by THINK AMBIENT and allow THINK AMBIENT the right, on reasonable notice, to inspect such Records. An audit carried out in accordance with this clause 8 shall be limited to once in any twelve month period.

9. INDEMNITY

9.1 The Supplier shall keep THINK AMBIENT indemnified in full against all direct, indirect and/or consequential losses (all of which include, without limitation, project delays, loss of business, depletion of goodwill and like loss), other liabilities, damages, injury, costs and expenses (including legal and other professional fees and expenses) incurred and/or paid by THINK AMBIENT as a result of or in connection with:

9.1.1 defective workmanship, quality and/or materials evidenced in the Goods;

9.1.2 any infringement or alleged infringement of any intellectual property rights caused by the use, manufacture and/or supply of the Goods; and

9.1.3 any claim made against THINK AMBIENT in respect of any liability, loss, damage, injury, cost or expense sustained THINK AMBIENT, its employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the Contract by the Supplier.

10. CONFIDENTIALITY

10.1 The Supplier shall keep in strict confidence all documents, information technical and/or commercial know-how, specifications, inventions, processes and initiatives which are of a confidential nature and have been disclosed to the Supplier by THINK AMBIENT or THINK AMBIENT's agents and any other confidential information concerning THINK AMBIENT's business or services which the Supplier may obtain or be made aware of, and the Supplier shall restrict disclosure of such confidential material to such of the Supplier's employees as need to know the same for the sole purpose of discharging the Suppliers obligations to THINK AMBIENT and shall ensure that such employees are subject to like obligations of confidentiality as bind the Supplier.

11. THINK AMBIENT PROPERTY

11.1 All property (including land and buildings), materials, equipment, tools, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by THINK AMBIENT to the Supplier or not so supplied but used by the Supplier specifically in the manufacture or development of the Goods shall at all times be and remain the THINK AMBIENT's exclusive property but shall be held by the Supplier in safe custody at the Supplier's risk and maintained and kept in good condition by the Supplier until returned to THINK AMBIENT and shall not be disposed of other than in accordance with THINK AMBIENT's written instructions, nor shall such items be used otherwise than as authorised by THINK AMBIENT in writing.

12. TERMINATION

12.1. THINK AMBIENT shall be entitled to terminate the Contract immediately without liability if:

12.1.1 the Supplier commits a material breach of any of the terms and conditions of the Contract;

12.1.2 the Supplier has a bankruptcy order made against it or has made an arrangement with its creditors or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors or (being a body corporate) has convened a meeting of creditors or enters into liquidation or has a receiver or an administrative receiver appointed or is the subject of similar procedures under the law of any other state or a resolution is passed or a petition presented to any court for the Suppliers winding up, or for the granting of an administration order, or any proceedings are commenced relating to the Supplier's insolvency or possible insolvency;

12.1.3 the Supplier ceases or threatens to cease to carry on business;

12.1.4 THINK AMBIENT reasonably apprehends that any of the events mentioned above are about to occur, or

12.1.5 in THINK AMBIENT's opinion the Supplier has abandoned the Contract.

12.2 The termination of the Contract, howsoever arising, shall be without prejudice to the rights and duties of the parties accrued prior to termination.

13. SUBSTITUTE SUPPLIER

13.1 THINK AMBIENT may engage a substitute supplier if:

13.1.1 the Supplier fails to deliver the Goods within the timescales set out in the Purchase Order and/or the Specification; or

13.1.2 the Goods fail to meet the requirements set out in the Specification or are not fit for purpose;

13.2 Where THINK AMBIENT engages a substitute supplier, THINK AMBIENT must notify the Supplier in respect of the Supplier's failure and raise a Purchase Order with a substitute supplier of THINK AMBIENT's choice to supply the Goods.

13.3 Where THINK AMBIENT has notified the Supplier in accordance with clause 13, THINK AMBIENT may recover from the Supplier any costs, losses, damages and expenses incurred by THINK AMBIENT because of the failure of the Supplier together with any costs and expenses incurred over and above the amount which THINK AMBIENT had originally agreed to pay to the Supplier for the supply of the Goods.

14. STOCK

14.1 Where THINK AMBIENT supply stock to be held at suppliers premises, the stock will remain in the ownership of THINK AMBIENT until it is used. Regular Stock checks will be performed by the supplier and THINK AMBIENT reserve the right to charge the supplier for excess usage over and above the allocations detailed in Purchase orders.

14.2 Where there are quality issues with supplied materials either on delivery or on press, The Supplier must inform THINK AMBIENT in writing in reasonable time, including batch numbers and machine downtime. Where appropriate THINK AMBIENT will reimburse the supplier the cost of machine downtime subject to agreement in writing.

15. GENERAL

15.1. The Supplier shall not be entitled to assign the Contract or any part of it or sub-contract any of its obligations without THINK AMBIENT's prior written consent.

15.2 THINK AMBIENT reserves the right to defer the date of payment or to cancel the Contract or reduce the volume of Goods ordered without liability if THINK AMBIENT is prevented from or delayed in the carrying on the project or business for which the Goods are required due to circumstances beyond THINK AMBIENT's reasonable control.

15.3 Any waiver by THINK AMBIENT of any breach of or default under the Contract by the Supplier shall not be considered as a waiver of any subsequent breach or default of the Contract.

15.4 Failure or delay by THINK AMBIENT in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of THINK AMBIENT's rights under the Contract.

15.5 If any provision of this Contract is held by any competent authority to be invalid, void, voidable, unenforceable or unreasonable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall continue in full force and effect.

15.6 These conditions supersede all prior agreements of whatever nature and prevails over any other terms and conditions including but not limited to any standard conditions printed and/or contained on any invoice, quotation or acknowledgement submitted by the Supplier.

15.7 The Contract shall be subject to English Law in all respects (including formation) and shall be construed and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England.